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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SILVIA CHAVEZ ROSAS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-74191

Agency No. A070-917-076

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 13, 2009^{**}

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Silvia Chavez Rosas, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order denying her motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

a motion to reopen, *Singh v. Gonzales*, 491 F.3d 1090, 1095 (9th Cir. 2007), and we deny the petition for review.

The agency acted within its discretion in denying Chavez Rosas' motion to reopen as untimely because it was filed more than two years after she was ordered removed *in absentia*, see 8 U.S.C. § 1229a(b)(5)(C)(i), and Chavez Rosas failed to establish grounds for equitable tolling. See *Singh*, 491 F.3d at 1095-96 (equitable tolling is available "when a petitioner is prevented from filing because of deception, fraud, or error," as long as the petitioner acted with due diligence).

PETITION FOR REVIEW DENIED.